

HOUSE BILL NO. 373

INTRODUCED BY A. OLSON, BALES, BALLANTYNE, BRUEGGEMAN, E. CLARK, DEVLIN, FORRESTER,
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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE
RECLAMATION LAWS; CLARIFYING THE POLICY AND FINDINGS; CLARIFYING CERTAIN DEFINITIONS
AND DEFINING CERTAIN TERMS; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY TO APPROVE OR DISAPPROVE MINOR REVISIONS; MODIFYING PERMIT
APPLICATION REQUIREMENTS; CLARIFYING HYDROLOGIC BALANCE RECLAMATION REQUIREMENTS;
MODIFYING AREA MINING REQUIREMENTS; MODIFYING THE REQUIREMENTS FOR PLANTING
VEGETATION FOLLOWING GRADING OF A DISTURBED AREA; PROVIDING STANDARDS FOR
SUCCESSFUL REVEGETATION; CLARIFYING THAT VEGETATION THAT IS PLACED OR SEEDED
BECOMES THE PROPERTY OF THE LANDOWNER AFTER THE BOND IS RELEASED; ALLOWING
REVISION OF PERMIT AND RECLAMATION PLAN APPLICATIONS IN ORDER TO INCORPORATE THE
PROVISIONS OF THIS ACT; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-221, 82-4-222, 82-4-231,
82-4-232, 82-4-233, 82-4-234, 82-4-235, AND 82-4-236, MCA; AND PROVIDING A DELAYED EFFECTIVE
DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-202, MCA, is amended to read:

"82-4-202. Policy -- findings. (1) It is the declared policy of this state and its people to:

- (a) maintain and improve the state's clean and healthful environment for present and future generations;
- (b) protect its environmental life-support system from degradation;
- (c) prevent unreasonable degradation of its natural resources;
- (d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;
- (e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain

1 state administration of the reclamation program;

2 (f) require the legislature to provide for proper administration and enforcement, create adequate
3 remedies, and set effective requirements and standards ~~(especially as to reclamation of disturbed lands)~~, in
4 order to achieve ~~the aforementioned~~ those objectives; and

5 (g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~
6 ensure the wise use of these resources and prevent the failure to conserve coal.

7 (2) The legislature hereby finds and declares that:

8 (a) in order to achieve the ~~aforementioned~~ policy objectives enumerated in subsection (1), promote the
9 health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve
10 agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ ensure a
11 long-range dependable tax base, it is reasonably necessary to require, ~~after March 16, 1973~~, that all strip-mining
12 and underground-mining operations be limited to those for which 5-year permits are granted, that ~~no~~ a permit
13 may not be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal
14 conservation plan, together with an adequate performance bond, and the plan is approved, that certain other
15 things must be done, that certain remedies are available, that certain lands because of their unique or unusual
16 characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly
17 appears in the remaining provisions of this part, and that the department be given authority to administer and
18 enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and
19 Reclamation Act of 1977, as amended;

20 (b) this part ~~be deemed to be~~ is an exercise of the authority granted in the Montana constitution, ~~as~~
21 ~~adopted June 6, 1972~~, and, in particular, a response to the mandate expressed in Article IX ~~thereof~~ of the
22 constitution and ~~also be deemed to be~~ that this part is also an exercise of the general police power to provide
23 for the health and welfare of the people;

24 (c) coal mining alters the character of soils and overburden materials and that duplication of premining
25 topography, soils, and vegetation COMPOSITION is not practicable;

26 (d) the standard for successful reclamation of lands mined for coal is the reestablishment of sustainable
27 land use comparable to premining conditions or to higher or better uses; and

28 (e) standards for successful reclamation must be well-defined, consistent, and attainable so that mine
29 operators can reclaim lands disturbed by mining with confidence that the release of performance bonds can be
30 achieved."

1

2 **Section 2.** Section 82-4-203, MCA, is amended to read:

3 **"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions
4 apply:

5 (1) "Abandoned" means an operation in which a mineral is not being produced and that the department
6 determines will not continue or resume operation.

7 (2) "Adjacent area" means the area outside the permit area where a resource or resources, determined
8 in the context in which the term is used, are or could reasonably be expected to be adversely affected by
9 proposed mining operations, including probable impacts from underground workings.

10 ~~(2)~~(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where
11 water availability is sufficient for subirrigation or flood irrigation agricultural activities.

12 (b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial
13 deposits composed chiefly of debris from sheet erosion; and deposits by unconcentrated runoff or slope wash,
14 together with talus, other mass movement accumulation, and windblown deposits.

15 (4) "Approximate original contour" means that surface configuration achieved by backfilling and grading
16 of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the
17 general surface configuration of the land prior to mining and blends into and complements the drainage pattern
18 of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

19 (a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the
20 premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these
21 features after mining, recognizing that rolls and dips need not be restored to their original locations and that level
22 areas may be increased.

23 (b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so
24 that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an
25 unobstructed and controlled manner;

26 (c) postmining drainage basins may differ in size, location, configuration, orientation, and density of
27 ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion
28 is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as
29 necessary to support postmining land uses within the area affected and the adjacent area; AND

30 ~~(d) elimination of all highwalls, spoil piles, and depressions does not mean that spoil from the first cut~~

~~must be transported to the last cut if highwalls are eliminated and box cut spoils are graded to blend in with the surrounding terrain; and~~

~~(e)(D)~~ the reclaimed surface configuration is appropriate for the postmining land use.

~~(3)(5)~~ "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

~~(4)(6)~~ (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

~~(5)(7)~~ "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

~~(6)(8)~~ "Board" means the board of environmental review provided for in 2-15-3502.

~~(7)(9)~~ "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(8)(10)~~ (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(9)(11)~~ "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(12) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance ~~is~~ are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(13) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(14) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

(15) "Department" means the department of environmental quality provided for in 2-15-3501.

(16) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(17) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

(18) "Failure to conserve coal" means the nonremoval or ~~nonutilization~~ nonuse of minable and marketable coal by an operation. However, the nonremoval or ~~nonutilization~~ nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

(19) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(20) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(21) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(22) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(23) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(24) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or

1 reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes
2 in ground water and surface water storage as they relate to uses of land and water within the area affected by
3 mining and the adjacent area.

4 ~~(15)~~(25) "Imminent danger to the health and safety of the public" means the existence of any condition
5 or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining
6 and reclamation operation that could reasonably be expected to cause substantial physical harm to persons
7 outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of
8 death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices
9 giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

10 (26) "Industrial or commercial" means land used for:

11 (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or
12 long-term storage of products. This includes all heavy and light manufacturing facilities.

13 (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other
14 commercial establishments.

15 (27) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least
16 some part of the year and that obtains its flow from both ground water discharge and surface runoff.

17 (28) "Land use" means specific uses or management-related activities, rather than the vegetative cover
18 of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land
19 used for support facilities that are an integral part of the land use. Land use categories include cropland,
20 developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland,
21 land occasionally cut for hay, recreation, OR residential, or undeveloped land.

22 ~~(16)~~(29) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale
23 in the usual course of trade.

24 (30) "Material damage" means, with respect to protection of the hydrologic balance, degradation or
25 reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area
26 in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality
27 standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an
28 existing water use is affected, is material damage.

29 ~~(17)~~(31) "Method of operation" means the method or manner by which the cut, open pit, shaft, or
30 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by

1 the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of
2 land affected.

3 ~~(18)~~(32) "Minable coal" means that coal that can be removed through strip- or underground-mining
4 methods adaptable to the location that coal is being mined or is planned to be mined.

5 ~~(19)~~(33) "Mineral" means coal and uranium.

6 ~~(20)~~(34) "Operation" means:

7 (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing
8 and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal
9 preparation plants; and

10 (b) all activities, including excavation incident to operations, or prospecting for the purpose of
11 determining the location, quality, or quantity of a natural mineral deposit.

12 ~~(21)~~(35) "Operator" means a person engaged in:

13 (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards
14 of mineral or overburden;

15 (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining
16 within 12 consecutive calendar months in any one location;

17 (c) operating a coal preparation plant; or

18 (d) uranium mining using in situ methods.

19 ~~(22)~~(36) "Overburden" means:

20 (a) all of the earth and other materials that lie above a natural mineral deposit; and

21 (b) the earth and other material after removal from their natural state in the process of mining.

22 (37) "Pastureland" means land used primarily for the long-term production of adapted, domesticated
23 forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

24 (38) "Perennial stream" means a stream or part of a stream that flows continuously during all of the
25 calendar year as a result of ground water discharge or surface runoff.

26 ~~(23)~~(39) "Person" means a person, partnership, corporation, association, or other legal entity or any
27 political subdivision or agency of the state or federal government.

28 ~~(24)~~(40) "Prime farmland" means land that:

29 (a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the
30 Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(25)(41)~~ "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(26)(42)~~ "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work ~~to restore an area of land~~ conducted on lands affected by strip mining or underground mining under a plan approved by the department UNDER A PLAN APPROVED BY THE DEPARTMENT to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

~~(43)~~ "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less-intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

~~(44)~~ "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(27)(45)~~ "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(46)~~ "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

~~(47)~~ "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(28)(48)~~ (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or

1 displaced in order to recover the mineral.

2 (b) For the purposes of this part only, strip mining also includes remining and coal preparation.

3 (c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for
4 purposes of Title 15, chapter 35, part 1.

5 ~~(29)(49)~~ "Subsidence" means a vertically downward movement of overburden materials resulting from
6 the actual mining of an underlying mineral deposit or associated underground excavations.

7 ~~(30)(50)~~ "Surface owner" means:

8 (a) a person who holds legal or equitable title to the land surface ~~and whose principal place of residence~~
9 ~~is on the land;~~

10 (b) ~~a person who personally conducts farming or ranching operations upon a farm or ranch unit to be~~
11 ~~directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from~~
12 ~~farming or ranching operations a purchaser of equitable title to the land surface under a contract for deed; or~~
13 A PERSON WHO PERSONALLY CONDUCTS FARMING OR RANCHING OPERATIONS UPON A FARM OR RANCH UNIT TO BE
14 DIRECTLY AFFECTED BY STRIP-MINING OPERATIONS OR WHO RECEIVES DIRECTLY A SIGNIFICANT PORTION OF INCOME
15 FROM FARMING OR RANCHING OPERATIONS;

16 (c) the state of Montana when the state owns the surface; OR

17 (D) THE APPROPRIATE FEDERAL LAND MANAGEMENT AGENCY WHEN THE UNITED STATES GOVERNMENT OWNS
18 THE SURFACE.

19 ~~(31)(51)~~ "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of
20 the earth, that has been subjected to and influenced by genetic and environmental factors of parent material,
21 climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is
22 necessary for the growth and regeneration of vegetation on the surface of the earth.

23 ~~(32)(52)~~ "Underground mining" means any part of the process that is followed in the production of a
24 mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations
25 penetrating the mineral stratum or strata. The term includes mining by in situ methods.

26 ~~(53) "Undeveloped land" means land that:~~

27 ~~—— (a) has no current use or is not currently being managed; or~~

28 ~~—— (b) if previously developed, has been allowed to return naturally to an undeveloped state or has been~~
29 ~~allowed to return to forest through natural succession.~~

30 ~~(33)(54)(53)~~ "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(34)(55)(54)~~ "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(56)(55)~~ "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(35)(57)(56)~~ "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 3. Section 82-4-221, MCA, is amended to read:

"82-4-221. Mining permit required. (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the

1 commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the
2 control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a
3 synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced
4 strip- or underground-mining operations at the time the construction of the synthetic or generating facility is
5 initiated.

6 (2) As a condition to the issuance of each permit issued under this part, an authorized representative
7 of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or
8 underground-mining operation or any premises in which any records required to be maintained under this part
9 are located and may, at reasonable times and without delay, have access to copy any records and inspect any
10 monitoring equipment or method of operation required under this part. When an inspection results from
11 information provided to the department by any person, the department shall notify that person when the
12 inspection is proposed to be made and that person must be allowed to accompany the inspector during the
13 inspection.

14 (3) During the term of the permit, the permittee may submit an application for a revision of the permit,
15 together with a revised reclamation plan, to the department. The department may not approve the application
16 unless it finds that reclamation in accordance with this part would be accomplished. Application for minor
17 revision must be approved or disapproved within a reasonable time, depending on the scope and complexity,
18 ~~but in no case longer than 120 days~~ within 60 days, which may be extended by an additional 30 days by mutual
19 agreement of the department and the applicant. Applications for major revisions are subject to all the permit
20 application requirements and procedures."

21
22 **Section 4.** Section 82-4-222, MCA, is amended to read:

23 **"82-4-222. Permit application.** (1) An operator desiring a permit shall file an application that must
24 contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and
25 water to be affected by the operation. The plan must reflect thorough advance investigation and study by the
26 operator, include all known or readily discoverable past and present uses of the land and water to be affected
27 and the approximate periods of use, and ~~state~~ provide:

28 (a) the location and area of land to be affected by the operation, with a description of access to the area
29 from the nearest public highways;

30 (b) the names and addresses of the owners of record and any purchasers under contracts for deed of

1 the surface of the area of land to be affected by the permit and the owners of record and any purchasers under
2 contracts for deed of all surface area within one-half mile of any part of the affected area;

3 (c) the names and addresses of the present owners of record and any purchasers under contracts for
4 deed of all subsurface minerals in the land to be affected;

5 (d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

6 (e) the permanent and temporary post-office addresses of the applicant;

7 (f) whether the applicant or any person associated with the applicant holds or has held any other permits
8 under this part and an identification of those permits;

9 (g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner,
10 director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class
11 of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

12 (ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining
13 or underground-mining license or permit issued by any other state or federal agency revoked or have ever
14 forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed
15 explanation of the facts involved in each case must be attached.

16 (h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory
17 authority;

18 (i) the names and addresses of any persons who are engaged in strip-mining or underground-mining
19 activities on behalf of the applicant;

20 (j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where
21 the applicant has requested a permit;

22 (k) the results of any test borings or core samplings that the applicant or ~~his~~ the applicant's agent has
23 conducted on the land to be affected, including the nature and the depth of the various strata or overburden and
24 topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an
25 analysis of the chemical properties of the minerals, including the acidity, sulphur content, and trace mineral
26 elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the
27 overburden, including topsoil. If test borings or core samplings are submitted, each permit application must
28 contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup
29 beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department
30 requires across the surface and must run at a 90-degree angle to the other set. The department may not require

intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of ~~his~~ the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

1 (E) other characteristics required by the department that potentially affect beneficial uses of water in
2 and adjacent to the permit area;

3 (n) a plan for monitoring ground water and surface water, based upon the determination of probable
4 hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of
5 parameters that relate to the availability and suitability of ground water and surface water for current and
6 approved postmining land uses and the objectives for protection of the hydrologic balance.

7 (o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other
8 methods approved by the department, showing the manner of spoil placement, showing removal of coal volume
9 and overburden swell, and including:

10 (i) locations and elevations of tie-in points with adjacent unmined drainageways;

11 (ii) approximate locations of primary or highest order drainageways and associated drainage divides in
12 the reclaimed topography; and

13 (iii) projected elevations of primary drainageways and associated drainage divides and generalized
14 slopes with the level of detail appropriate to project the approximate original contour;

15 (p) the condition of the land to be covered by the permit prior to any mining, including:

16 (i) the land uses existing at the time of the application and, if the land has a history of previous mining,
17 the uses that preceded any mining;

18 (ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil
19 characteristics, topography, and vegetative cover; and

20 (iii) the productivity of the land prior to mining, including appropriate classification as prime farm land,
21 as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

22 ~~(n)~~(q) a coal conservation plan; and

23 ~~(o)~~(r) other or further information as the department may require.

24 (2) The application for a permit must be accompanied by two copies of all maps meeting the
25 requirements of subsections (2)(a) through ~~(2)(n)~~ (2)(q). The maps must:

26 (a) identify the area to correspond with the application;

27 (b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names
28 of owners of record of the affected area and within 1,000 feet of any part of the affected area;

29 (c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings,
30 cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must

1 address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is
2 anticipated that individual permits will be sought.

3 (5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued
4 by an insurance company authorized to do business in the state, certifying that the applicant has in force for the
5 strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability
6 insurance policy; or evidence that the applicant has satisfied other state or federal self-insurance requirements.
7 This policy must provide for personal injury and property damage protection in an amount adequate to
8 compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation
9 operations, including use of explosives, and entitled to compensation under applicable provisions of state law.
10 The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until
11 all reclamation operations have been completed.

12 (6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of ~~his~~
13 the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in
14 which the major portion of mining is proposed to occur."
15

16 **Section 5.** Section 82-4-231, MCA, is amended to read:

17 **"82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively
18 as the most modern technology and the most advanced state of the art will allow, each operator granted a permit
19 under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels,
20 shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules
21 adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading,
22 backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for
23 the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling,
24 highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be
25 taken to eliminate damages to landowners and members of the public, their real and personal property, public
26 roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and
27 hazards dangerous to life and property.

28 (2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply
29 with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and
30 water quality laws and rules and any applicable health and safety standards.

1 (3) The application for permit or major revision of a permit, which must contain the reclamation plan,
2 must be submitted to the department.

3 (4) The department shall determine whether the application is administratively complete. An application
4 is administratively complete if it contains information addressing each application requirement in 82-4-222 and
5 the rules implementing that section and all information necessary to initiate processing and public review. The
6 department shall notify the applicant in writing of its determination no later than 90 days after submittal of the
7 application. If the department determines that the application is not administratively complete, it shall specify in
8 the notice those items that the application must address. The application is presumed administratively complete
9 as to those requirements not specified in the notice.

10 (5) If the department determines that an environmental impact statement on the application is required,
11 it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

12 (6) After the applicant receives notice that the application is administratively complete, the applicant
13 shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general
14 circulation in the locality of the proposed operation. The department shall notify various local governmental
15 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which
16 the proposed mining will take place of the application and provide a reasonable time for them to submit written
17 comments. Any person having an interest that is or may be adversely affected or the officer or head of any
18 federal, state, or local governmental agency or authority may file written objections to the proposed initial or
19 revised application for permit or major revision within 30 days of the applicant's published notice. If written
20 objections are filed and an objector requests an informal conference, the department shall hold an informal
21 conference in the locality of the proposed operation within 30 days of receipt of the request. The department
22 shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision
23 within 60 days of the informal conference. The department may arrange with the applicant upon request by any
24 party to the administrative proceeding for access to the proposed mining area for the purpose of gathering
25 information relevant to the proceeding.

26 (7) The filing of written objections or a request for an informal conference may not preclude the
27 department from proceeding with its review of the application as specified in subsection (8).

28 (8) (a) The department shall review each administratively complete application and determine the
29 acceptability of the application. During the review, the department may propose modifications to the application
30 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application

1 is considered acceptable when the application is in compliance with all of the applicable requirements of this part
2 and the regulatory program pursuant to this part.

3 (b) If the applicant significantly modifies the application after the application has been determined
4 administratively complete in accordance with subsection (4), the department shall under this section either deny
5 the application or conduct a new review, including an administrative completeness determination, public notice,
6 and objection period.

7 (c) If an environmental impact statement is determined to be necessary prior to making a permit
8 decision, the department shall complete and publish the final environmental impact statement at least 15 days
9 prior to the date of issuance of the written findings pursuant to subsection (8)(f).

10 (d) Except as provided in 75-1-208(4)(b), within 120 days after it determines that an application is
11 administratively complete, the department shall notify the applicant in writing whether the application is or is not
12 acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not
13 acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not
14 specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided
15 in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the
16 department shall review the revised application and notify the applicant in writing within 120 days of the date of
17 receipt whether the revised application is acceptable. If the revision constitutes a significant modification under
18 subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness
19 determination.

20 (e) When the application is determined to be acceptable, the department shall publish notice of its
21 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the
22 proposed operation. Any person having an interest that is or may be adversely affected may file a written
23 objection to the determination within 10 days of the department's last published notice. If a written objection is
24 filed and an objector requests an informal conference, the department shall hold an informal conference in the
25 locality of the proposed operation within 20 days of receipt of the request. The department shall notify the
26 applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days
27 of the informal conference.

28 (f) Except as provided in 75-1-208(4)(b), the department shall prepare written findings granting or
29 denying the permit or major revision application in whole or in part ~~no~~ not later than 45 days from the date the
30 application is determined acceptable. However, if lands subject to the federal lands program are included in the

1 application for permit or major revision, the department shall prepare and submit written findings to the federal
2 regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on
3 the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is
4 obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification
5 to the applicant.

6 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately
7 notify the board in writing of its failure to comply and the reasons for the failure to comply.

8 (9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by
9 the department's permit decision may within 30 days of that decision submit a written notice requesting a
10 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error.
11 The hearing must be held within 30 days of the request. For purposes of a hearing, the department may order
12 site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify
13 the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings
14 and decisions. A person who presided at the informal conference may not preside at the hearing or participate
15 in the decision.

16 (10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence
17 stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this
18 part, the operator, consistent with the directives of subsection (1), shall:

19 (a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the
20 department to be acid-producing, toxic, undesirable, or creating a hazard;

21 (b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating
22 a hazard;

23 (c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage
24 to grazing and agricultural lands, and pollution of surface and subsurface waters;

25 (d) remove or bury all metal, lumber, and other refuse resulting from the operation;

26 (e) use explosives in connection with the operation only in accordance with department regulations
27 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for
28 other purposes;

29 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing
30 subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading,

1 topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved,
2 the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private
3 buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or
4 a viable agricultural operation, or violate any other restrictions the department may consider necessary.

5 (g) stockpile and protect from erosion all mining and processing wastes until these wastes can be
6 disposed of according to the provisions of this part;

7 (h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment
8 in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of
9 as provided by this part and the rules of the board.

10 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground
11 mine workings when no longer needed;

12 (j) to the extent possible using the best technology currently available, minimize disturbances and
13 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement
14 of those resources when practicable;

15 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in ~~associated~~
16 ~~offsite~~ adjacent areas and to the quality and quantity of water in surface water and ground water systems both
17 during and after strip- or underground-coal-mining operations and during reclamation as necessary to support
18 postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area by:

19 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

20 (A) preventing or removing water from contact with toxic-producing deposits;

21 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being
22 released to water courses;

23 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic
24 drainage from entering ground and surface waters;

25 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using
26 the best technology currently available, additional contributions of suspended solids to streamflow or runoff
27 outside the permit area, but the contributions may not be in excess of requirements set by applicable state or
28 federal law;

29 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement
30 of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer

1 and to be constructed as designed and as approved in the reclamation plan;

2 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from
3 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and
4 in a manner approved by the department;

5 (iv) restoring recharge capacity of the mined area to approximate premining conditions;

6 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water from
7 mines;

8 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of
9 alluvial valley floors in the arid and semiarid areas of the country; ~~and~~

10 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to
11 ensure long-term stability; and

12 ~~(vii)~~(viii) any other actions that the department may prescribe to protect the hydrologic balance as
13 necessary to support postmining land uses within the area affected and to prevent material damage to the
14 hydrologic balance in adjacent areas;

15 (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation
16 plan;

17 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

18 (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage
19 except when the department determines that the resulting impoundment of water in the auger holes may create
20 a hazard to the environment or the public health and safety;

21 (o) develop contingency plans to prevent sustained combustion;

22 (p) refrain from construction of roads or other access ways up a streambed or drainage channel or in
23 proximity to the channel so as to seriously alter the normal flow of water;

24 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of
25 this part, taking into consideration the physical, climatological, and other characteristics of the site;

26 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that
27 constitute a hazard to health and safety of the public;

28 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a
29 manner that prevents a gravity discharge of water from the mine.

30 (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise

1 placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other
2 materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for
3 which a bond has been posted under 82-4-223 or place the materials described in this section in a way that
4 normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or
5 outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner
6 that protects areas outside the permit area."

7
8 **Section 6.** Section 82-4-232, MCA, is amended to read:

9 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (A) Area strip mining, a method of
10 operation that does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls
11 must be reduced and the steepest slope of the reduced highwall may be no greater than 20 degrees from the
12 horizontal. Highwall reduction must be commenced at or beyond the top of the highwall and sloped to the graded
13 spoil bank. Reduction, backfilling, and grading must eliminate all highwalls and spoil peaks. The area of land
14 affected must be restored backfilled and graded to the approximate original contour of the land. However:

15 (a)(i) consistent with the adjacent unmined landscape elements, the operator may propose and the
16 department may approve regraded topography gentler than premining topography in order to ENHANCE THE
17 POSTMINING LAND USE AND develop a postmining landscape that will provide greater moisture retention, greater
18 stability, AND reduced soil losses from runoff and erosion, and enhanced options for higher or better uses;

19 (b)(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve
20 a long-term static safety factor of 1.3 or greater and to prevent slides;

21 (c)(iii) permanent impoundments may be approved if they are suitable for the postmining land use and
22 otherwise meet the requirements of this part, as provided by board rules; and

23 (d)(iv) reclaimed topography must be suitable for the approved postmining land use.

24 (B) SPOIL FROM THE FIRST CUT IS NOT REQUIRED TO BE TRANSPORTED TO THE LAST CUT IF HIGHWALLS ARE
25 ELIMINATED, BOX CUT SPOILS ARE GRADED TO BLEND IN WITH THE SURROUNDING TERRAIN, AND THE APPROXIMATE
26 ORIGINAL CONTOUR OF THE LAND IS ACHIEVED.

27 (e)(c) When directed by the department, the operator shall construct in the final grading diversion
28 ditches, depressions, or terraces that will accumulate or control the water runoff. Additional restoration work may
29 be required by the department according to rules adopted by the board.

30 (2) In addition to the backfilling and grading requirements, the operator's method of operation on steep

1 slopes may be regulated and controlled according to rules adopted by the board. These rules may require any
2 measure to accomplish the purpose of this part.

3 (3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal,
4 storage, replacement, and reconstruction, and the operator must as a minimum be required to:

5 (a) segregate the A horizon of the natural soil, except where it can be shown that other available soil
6 materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this
7 material separately from other spoil and provide needed protection from wind and water erosion or
8 contamination by other acid or toxic material;

9 (b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination
10 of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and
11 that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to
12 create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural
13 soil; and if not used immediately, stockpile this material separately from other spoil and provide needed
14 protection from wind and water erosion or contamination by acid or toxic material;

15 (c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction
16 and uniform depth over the regraded spoil material; and

17 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

18 (4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and
19 kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to
20 removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of
21 material that is capable, as determined by the department, of supporting surface vegetation virtually as well as
22 the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available
23 subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

24 (5) As determined by rules of the board, time limits must be established requiring backfilling, grading,
25 subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept
26 current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before
27 necessary equipment is moved from the operation.

28 (6) (a) The permittee may file a request with the department for the release of all or part of a
29 performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed
30 with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week

1 for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining
2 operation. The notice is considered part of any bond release application and must contain a notification of the
3 precise location of the land affected, the number of acres, the permit and the date approved, the amount of the
4 bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed,
5 and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition,
6 as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent
7 to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment
8 authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek
9 release from the bond.

10 (b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the
11 department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the
12 evaluation, the department shall consider, among other things, the degree of difficulty in completing any
13 remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of
14 continuance or future occurrence of the pollution, and the estimated cost of abating the pollution. The
15 department shall notify the permittee in writing of its decision to release or not to release all or part of the
16 performance bond within 60 days of the filing of the request if ~~no~~ a public hearing is not held pursuant to
17 subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days after the hearing.

18 (c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation
19 covered by the bond or deposit or portion of the bond or deposit has been accomplished as required by this part
20 according to the following schedule:

21 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded
22 area in accordance with the approved reclamation plan, the department shall release 60% of the bond or
23 collateral for the applicable permit area.

24 (ii) After revegetation has been established on the regraded lands in accordance with the approved
25 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing
26 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to
27 cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent
28 impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future
29 maintenance by the operator or the landowner have been made with the department. ~~No~~ Any part of the bond
30 or deposit may not be released under this subsection (6)(c)(ii):

1 (A) as long as the lands to which the release would be applicable are contributing suspended solids to
2 streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

3 (B) before soil productivity for prime farm lands to which the release would be applicable has returned
4 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent
5 management practices, as determined from the soil survey.

6 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,
7 the department shall release the remaining portion of the bond, but not before the expiration of the period
8 specified for responsibility and not until all reclamation requirements of this part are fully met.

9 (d) If the department disapproves the application for release of the bond or a portion of the bond, it shall
10 notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions
11 necessary to secure the release and allowing opportunity for a public hearing.

12 (e) When an application for total or partial bond release is filed with the department, it shall notify the
13 municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the
14 release of all or a portion of the bond.

15 (f) Any person with a valid legal interest that might be adversely affected by release of the bond or the
16 responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or
17 special expertise with respect to any environmental, social, or economic impact involved in the operation or is
18 authorized to develop and enforce environmental standards with respect to the operations has the right to file
19 written objections to the proposed release from bond to the department within 30 days after the last publication
20 of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the
21 department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the
22 request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. The date,
23 time, and location of the public hearing must be advertised by the department in a newspaper of general
24 circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation
25 proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for
26 the hearing.

27 (g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the
28 department pursuant to this section, the department may establish an informal conference to resolve written
29 objections.

30 (h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths;

subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

(7)(8) (A) An operator may propose and the department may approve higher or better uses as alternative postmining land uses, after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed land use A HIGHER OR BETTER USE AS AN ALTERNATIVE POSTMINING LAND USE. IF THE LANDOWNER IS NOT THE OPERATOR, THE OPERATOR SHALL SUBMIT WRITTEN DOCUMENTATION OF THE CONCURRENCE OF THE LANDOWNER OR THE LAND MANAGEMENT AGENCY WITH JURISDICTION OVER THE LAND. THE DEPARTMENT MAY APPROVE THE PROPOSED ALTERNATIVE POSTMINING LAND USE ONLY IF IT MEETS ALL OF THE FOLLOWING criteria:

(a)(i) There is a reasonable likelihood for achievement of the alternate land use.

(b)(ii) The alternate land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(c)(iii) The alternate land use will not:

(i)(A) be impractical or unreasonable;

(ii)(B) be inconsistent with applicable land use policies or plans;

(iii)(C) involve unreasonable delay in implementation; or

(iv)(D) cause or contribute to violation of federal, state, or local law. alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans must be submitted to the department, and after consultation with the landowner, if the plans are approved by the department and complied with within the time limits determined by the department as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the department. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(i).

~~———— (8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be used and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation at a minimum to:~~

~~———— (a) restore the land affected to a condition capable of supporting the use that it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood; if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not determined to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and~~

~~———— (b) prevent soil erosion to the extent achieved prior to mining.~~

(B) AS USED IN THIS SECTION, THE TERM "LANDOWNER" INCLUDES A PERSON WHO HAS SOLD THE SURFACE ESTATE TO THE OPERATOR WITH AN OPTION TO REPURCHASE THE SURFACE ESTATE AFTER MINING AND RECLAMATION ARE COMPLETE.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Section 7. Section 82-4-233, MCA, is amended to read:

"82-4-233. Planting of vegetation following grading of disturbed area. (1) ~~Except as provided in subsection (4), after the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant the legumes, grasses, shrubs, and trees that are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species~~

may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

—— (a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

—— (b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

—— (c) preventing soil erosion to the extent achieved prior to the operation. The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(a) diverse, effective, and permanent;

(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;

(c) at least equal in extent of cover to the natural vegetation of the area; and

(d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.

(2) ~~The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover must be defined by rules of the board. The reestablished plant species must:~~

(a) be compatible with the approved postmining land use;

(b) have the same seasonal growth characteristics as the original vegetation;

(c) be capable of self-regeneration and plant succession;

(d) be compatible with the plant and animal species of the area; and

(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.

(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:

(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;

(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates.

~~(3)~~(4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).

~~(4)~~(5) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department ~~pursuant to subsection (2)~~ and on which the reclaimed vegetation otherwise meets the requirements of ~~subsection~~ subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."

Section 8. Section 82-4-234, MCA, is amended to read:

"82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by ~~his~~ the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans ~~shall~~ must be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. ~~A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233."~~

Section 9. Section 82-4-235, MCA, is amended to read:

"82-4-235. ~~Inspection of vegetation~~ Determination of successful revegetation -- final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover AND PRODUCTION of living plants on the revegetated area must be at least equal to that of a reference area or other standard

1 approved by the department as appropriate for the postmining land use;

2 (c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of
3 revegetation must be determined on the basis of approved tree density standards or shrub density standards,
4 or both, and vegetative ground cover required to achieve the postmining land use;

5 (d) reestablished vegetation is diverse if multiple plant species meeting the requirements of
6 82-4-233(1)(b) are present. The department may approve a lesser diversity standard for postmining land uses
7 other than grazing land.

8 (e) reestablished vegetation is considered effective if the postmining land use is achieved and erosion
9 is controlled;

10 (f) reestablished vegetation is considered permanent if it is diverse and effective at the end of the
11 10-year responsibility period specified under subsection (2); and

12 (g) plant species comprising the reestablished vegetation are considered to have the same seasonal
13 characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to
14 be compatible with the plant and animal species of the area if those plant species are native to the area, are
15 introduced species that have become naturalized, or are introduced species approved by the department as
16 desirable and necessary to achieve the postmining land use.

17 (2) Inspection and evaluation for permanent diverse of reclaimed vegetative cover must be made as
18 soon as possible following an application for final bond release to determine if a satisfactory stand has been
19 established. If the department determines that a satisfactory permanent diverse vegetative cover has been
20 established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity
21 for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years
22 after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those
23 operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial
24 planting for all exploration activities and all other operations.

25 ~~(2)(3)~~ (a) Notwithstanding the provision in subsection ~~(4)~~ (2), on land from which coal was removed prior
26 to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed
27 in connection with this part after May 2, 1978, the department may approve for release a bond on an area of
28 reclaimed vegetation that meets the following criteria:

29 (i) it was seeded using a seed mixture that was approved by the department under the criteria
30 established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of ~~82-4-232(8)~~ 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection ~~(2)(a)~~ (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection ~~(4)~~ (2)."

Section 10. Section 82-4-236, MCA, is amended to read:

"82-4-236. Vegetation as property of landowner. All ~~legumes, grasses, shrubs, and trees~~ vegetation ~~which are~~ that is planted or seeded on the area of land affected as required by this part or rules adopted under this part ~~become~~ becomes the property of the landowner after complete release of the bond, unless the operator and the landowner agree otherwise."

NEW SECTION. Section 11. Permit and reclamation plan application revisions. (1) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on [the effective date of this act], in order to incorporate the provisions of this part.

(2) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before [the effective date of this act]. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

NEW SECTION. Section 12. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 11].

NEW SECTION. Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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2 NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured,
3 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

5 NEW SECTION. **Section 15. Contingent voidness.** (1) If any provision of [this act] is disapproved by
6 the United States secretary of the interior pursuant to 30 CFR 732.17, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

NEW SECTION. Section 16. Effective date. [This act] is effective January 1, 2004.

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